



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Matthew Walker,
County Correction Sergeant
(PM2077U), Essex County

CSC Docket No. 2017-2130

Examination Appeal

ISSUED: October 24, 2017 (RE)

Matthew Walker appeals the decision of the Division of Agency Services (DAS) which found that he lacked the required amount of permanent status in a title to which the examination was open for County Correction Sergeant (PM2077U), Essex County, and requests retroactive seniority.

The subject examination was announced with a closing date of November 21, 2016 and was open to employees in the competitive division who had an aggregate of three years of *continuous* permanent service in the title of County Correction Officer as of the closing date. There were 133 candidates who took the examination, and the results are not yet available.

The appellant was made permanent in the title County Correction Officer in Essex County on September 19, 2015, and thus, he was found to possess 1 year, 2 months, and 2 days of permanent service in the title County Correction Officer as of the closing date, and thereby lacked 1 year, 9 months, and 28 days. The appellant signed an Intergovernmental Transfer Waiver of Rights on August 31, 2015 that indicated that he waived retention of rights to all accumulated seniority.

On appeal of this issue, the appellant stated that he was advised that he would be eligible to take promotional examinations after an intergovernmental transfer to Essex County from Hunterdon County on September 19, 2015. He states that he took a voluntary demotion from County Correction Sergeant to County Correction Officer, and he signed a waiver of seniority rights without understanding that he would not retain seniority for examination purposes. He states that the

Essex County representative was adamant that the waiver only affected “in-house” seniority, *i.e.*, vacation picks and bided posts. He states that had he known that it would waive his total seniority, he may have chosen a jurisdiction that did not use the waiver. He explains that he did not receive a response to his query to the personnel office regarding vacation leave time entitlements until after his transfer, and that this violated his rights, he was “forced” to sign the waiver, and he was “threatened” to sign a waiver of seniority or not be hired. The appellant identifies three other employees who received an intergovernmental transfer. He states that these individuals originally had been granted seniority, but it was removed from them upon his inquiry into their seniority status. He states that Essex County did not fully understand the intergovernmental transfer process.

N.J.A.C. 4A:4-2.6(a) (Eligibility for promotional examination) states, in pertinent part, that applicants for promotional examinations shall, by the application filing date, meet the criteria of having one year of *continuous permanent service for an aggregate of one year immediately preceding the closing date* in a title or titles to which the examination is open. For purposes of Intergovernmental Transfers, aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15(d)3 which provides:

Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C.* 4A:4-7.1A shall be deducted from seniority for all firefighters, and for those law enforcement officers, including sheriff's officers and county correction officers, who have waived all accumulated seniority rights in agreeing to an intergovernmental transfer.

CONCLUSION

In the instant matter, the appellant was correctly found ineligible for the subject examination for failure to meet the announced time-in-grade requirements. Mr. Walker was not permanent in the announced title for three years as of the closing date in the title County Correction Officer, but lacked 1 year, 9 months, and 28 days. *N.J.S.A.* 11A:2-28(a) and (b) provide that law enforcement officers, including County Correction Officers and Sheriff's Officers, shall be granted all privileges under the intergovernmental transfer program, including the option to waive all accumulated sick leave and seniority rights, and that the waiver of accumulated sick leave and seniority rights shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Civil Service Commission. *See also, N.J.A.C.* 4A:4-7.1A(b)2.

The appellant is essentially arguing that he did not understand the terms of his intergovernmental transfer, or that he signed a waiver without realizing the terms. The Civil Service Commission (Commission) is not persuaded that the

meaning and intent of the waiver was not explained to the appellant before he signed it, or that it was explained to him to mean only that he waived seniority for vacation picks and bided posts. The Intergovernmental Transfer Waiver of Rights form is a Commission form, not a form created by this appointing authority or any other appointing authority. There is a plethora of information regarding intergovernmental transfers at: <http://www.state.nj.us/csc/authorities/faq/intergov/>, which is available to all candidates, and was available to the appellant in 2015. There is a Guide to the Intergovernmental Transfer Process for Appointing Authorities at: <http://www.state.nj.us/csc/about/divisions/slo/pdf/itp09.pdf>. This guide explains the necessary forms and procedures to the appointing authorities, and includes the Intergovernmental Transfer Waiver of Rights form.

On the Intergovernmental Transfer Agreement, which is signed by all parties, there is a section for the Receiving Jurisdiction Agreement that is completed by the appointing authority. This section contains the following, “Employees shall retain all accumulated seniority rights and sick time, **except for those transferring in the title of Firefighter**. A Waiver of such rights shall be afforded to those in Law Enforcement titles and must be agreed upon with written consent from the receiving authority, the affected employee, and the Commission. A signed Law Enforcement Waiver **[is] [is not]** attached.” The Waiver states, “Employees seeking intergovernmental transfers in Law Enforcement titles shall be granted the option to waive retention of rights to **all accumulated seniority**. By authorized signature of transferee below, a waiver has been requested: I request to waive my rights to all accumulated seniority and authorize the Civil Service Commission to facilitate an intergovernmental transfer as specified in the attached Intergovernmental Transfer Agreement (DPF-721).” The appellant signed this on August 31, 2015.

The appellant was not “forced” to sign this waiver, nor was he threatened. Rather, signing the waiver was a condition of employment, and the appellant could have chosen not to be intergovernmentally transferred to Essex County from Hunterdon County or agree to a voluntary demotion to effect the transfer. An intergovernmental transfer is a voluntary agreement between an appointing authority, prospective employee, and this agency and no party is compelled to participate in the program. It is the employee’s responsibility to understand the terms of any agreement he signs, or to ask questions regarding the meaning of terms he does not understand. There are multiple uses for seniority, which is not restricted to examinations. *N.J.A.C. 4A:4-7.4(c)* specifically provides that, in the case of an intergovernmental transfer of a law enforcement officer who has agreed to waive all accumulated seniority rights, the officer shall not retain seniority for the purposes of determining promotional, layoff, or demotional rights and sick and vacation leave entitlements. In other words, the rules only permit an individual to waive or retain all Civil Service related seniority rights if the parties agree to these terms. They do not permit the retention of some Civil Service related seniority

rights, such as those governing promotional eligibility, but not others, such as seniority scoring for examination purposes or layoff rights determinations.

The accumulation of seniority rights for “in-house” purposes is strictly a determination made by the various jurisdictions or collective negotiation agreements and is not under the purview of the Commission. Additionally, the appointing authority does not have any authority to promise that the Commission will not enforce the statutory right of an agreed upon waiver of seniority rights. Similarly, if the waiver was not honored for other employees at some time in the past, it is irrelevant as the appellant clearly waived his seniority rights. Regardless, current records indicate that each of the individuals named by the appellant signed the waiver, seniority was not transferred with the employees, and leave balances were not transferred. Mr. Walker did not have three years of continuous permanent service as a County Correction Officer as of the November 21, 2016 closing date, he was correctly found to be ineligible for the examination, and he is not entitled to retroactive seniority.

A thorough review of all material presented indicates that the decision of DAS, that appellant did not meet the announced requirements for eligibility by the examination closing date, is amply supported by the record and appellant provides no basis to disturb this decision. Thus, the appellant has failed to support his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal and his request for retroactive seniority be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 18th DAY OF OCTOBER, 2017



Robert M. Czedz, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312

c: Matthew Walker
Robert Jackson
Kelly Glenn
Records Center